

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

RICKKE LEON GREEN,

Plaintiff,

vs.

MARCO J. PALUMBO, et al.,

Defendants.

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Case No. CIV-05-1206-L

**REPORT AND RECOMMENDATION**

Plaintiff, a state prisoner appearing pro se, has filed a complaint purporting to allege a violation of his constitutional rights. However, he did not pay the \$250 filing fee, and as will be discussed below, he is not eligible to proceed *in forma pauperis*. Thus, for the reasons stated herein, it is recommended that Plaintiff's complaint be dismissed without prejudice unless Plaintiff pays the \$250 filing fee within twenty days of any order adopting this Report and Recommendation.

A prisoner who has had three actions previously dismissed on the grounds that the lawsuit was frivolous, malicious or failed to state a claim, may not, absent "imminent danger of serious physical injury," file a new civil action without prepayment of the entire filing fee. 28 U.S.C. § 1915(g). A review of Court records demonstrates that Plaintiff has previously filed numerous civil rights actions in both this Court and in the United States District Court for the Northern District of Oklahoma. At least three of those actions were dismissed by the Court as either frivolous or for failure to state a claim. See Green v. Seymour, 59 F.3d 1073 (10<sup>th</sup> Cir. 1995) (affirming the Northern District's dismissal of Plaintiff's claims as frivolous); Green v. Simpson, No. 92-5208, 1994 WL 642190 (10<sup>th</sup> Cir. Nov. 15, 1994) (affirming Northern District's orders dismissing

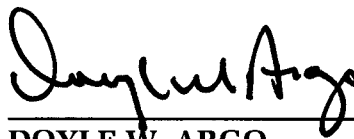
Plaintiff's claims as frivolous); Rickke Leon Green v. Hon. Ralph G. Thompson, et al., CIV-94-56-R, United States District Court for the Western District of Oklahoma (Order dismissing case on June 3, 1994 for failure to state a claim upon which relief may be granted. Plaintiff's appeal of that order to the Tenth Circuit was dismissed for lack of prosecution on December 12, 1994, Case No. 94-6240, Tenth Circuit Court of Appeals); and Rickke L. Green v. David C. Phillips, III, et al., Case No. CIV-93-1498-T, United States District Court for the Western District of Oklahoma (Order dismissing Plaintiff's claims as frivolous entered August 15, 1994. Plaintiff's appeal of that order to the Tenth Circuit was dismissed on January 23, 1995, on the ground that Plaintiff had waived his right to appeal by failing to file any objections to the magistrate judge's recommendation, Case No. 94-6332, Tenth Circuit Court of Appeals).

Plaintiff has not made a relevant showing of imminent danger of serious physical injury. 28 U.S.C. § 1915(g). Thus, Plaintiff may proceed with this lawsuit only by prepaying the full filing fee. See Jennings v. Natrona County Detention Center Medical Facility, 175 F.3d 775, 778 (10<sup>th</sup> Cir. 1999) ("[Section 1915(g)] does not prevent prisoners with three strikes from filing civil actions; it merely prohibits them the privilege of *in forma pauperis* status.").

Therefore, it is recommended that unless Plaintiff pays the \$250 filing fee in full to the Clerk of the Court within twenty (20) days of any order adopting this Report and Recommendation, that this action be dismissed without prejudice to refiling. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by November 10<sup>th</sup>, 2005, in accordance with 28 U.S.C. § 636 and Local

Civil Rule 72.1. Plaintiff is further advised that failure to timely object to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. Moore v. United States, 950 F.2d 656 (10<sup>th</sup> Cir. 1991).

IT IS SO ORDERED this 21<sup>st</sup> day of October, 2005.

A handwritten signature in black ink, appearing to read "Doyle W. Argo", written over a horizontal line.

DOYLE W. ARGO  
UNITED STATES MAGISTRATE JUDGE